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No. 16-712

IN THE
Supreme Court of the United States

OIL STATES ENERGY SERVICES, LLC,
Petitioner,

v.

GREENE'S ENERGY GROUP, LLC, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF FOR VOLKSWAGEN GROUP OF AMERICA, INC. AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE

Volkswagen Group is the largest carmaker in Europe and one of the world's leading manufacturers of automobiles and commercial vehicles.[1] All the companies in Volkswagen Group (such as Volkswagen, Audi, Bentley, Bugatti, Lamborghini, Porsche, etc.) make substantial investments in research and development with a view towards becoming the world's preeminent providers of sustainable mobility. One of Volkswagen's important missions is to anticipate the future needs of its customers and to develop new technologies to meet those needs. In pursuit of that goal, Volkswagen has pioneered initiatives such as the Electronic Research Lab, a Silicon-Valley based laboratory, and the Engineering and Planning Center in Chattanooga, Tennessee, which are staffed by some of the most talented engineers and scientists from around the world.[2] Through this and other initiatives, Volkswagen maintains a presence on the cutting edge of automotive innovations.

Volkswagen Group maintains extensive patent portfolios and fundamentally believes in the importance of a strong patent system. It is vital to the functioning of our Nation's economy that we continue to incentivize innovation through the promise of patent protection. For example, Volkswagen offers

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[1] Pursuant to Supreme Court Rule 37.6, Volkswagen states that no counsel for a party has authored this brief in whole or in part, and no person or entity other than amicus or its counsel made any monetary contribution intended to fund the preparation or submission of this brief. Blanket consent letters on behalf of all parties are on file with the Court.

[2] *See* http://www.vwerl.com/about/.

its employees generous remuneration programs for inventions made in the course of their employment that are ultimately patented.

However, Volkswagen is acutely aware that the patent system is also susceptible to abuse. Like many innovative businesses, Volkswagen has in recent years been faced with a large number of patent infringement lawsuits brought by non-practicing entities (NPEs)—organizations that hold patents but do not make or sell any goods or services based on the technologies disclosed in the patents. In the past several years, Volkswagen has been sued repeatedly by NPEs. In many—if not most—cases, Volkswagen's diligence concerning the patents asserted in these lawsuits has uncovered strong invalidating prior art that has eventually led to termination of the lawsuit in Volkswagen's favor. In other words, many of the lawsuits brought by NPEs are based on substantively deficient patents that represent little or no meaningful improvement over the prior art and likely should never have issued at all. Volkswagen is thus forced to spend significant sums of money defending lawsuits that ultimately prove meritless—funds that it could otherwise be investing in research and development aimed at delivering greater value to its customers.

The *Inter Partes* Review process established by the America Invents Act has proved to be an efficient, streamlined, and low-cost avenue through which Volkswagen, armed with invalidating prior art, can prevent or arrest meritless patent infringement suits, thus allowing the company to provide its customers with high-quality innovations at affordable prices. At the same time, however, *Inter Partes*

Reviews—which are conducted by experienced administrative judges steeped in the legal and technical principles necessary to review patent challenges—also afford patent *owners* with valid patents an efficient and low-cost way to have the validity of those patents confirmed, so that they may be confidently asserted in infringement lawsuits in federal courts and before administrative agencies such as the U.S. International Trade Commission. Thus, the system ultimately operates to the benefit of all by (1) lowering the cost of patent litigation; (2) ensuring that defective patents do not stand in the way of future innovation; and (3) "promot[ing] the progress of science and useful arts," U.S. Const. art. I, § 8, cl. 8, by protecting the interests of owners of high-quality patents that represent meaningful technological advances.

Volkswagen Group of America, Inc. respectfully submits this brief in order to share its positive experience with IPR proceedings and to provide the Court with information regarding how these proceedings can lower costs and improve quality and output in high-tech industries.

SUMMARY OF ARGUMENT

The America Invents Act (AIA) established the *Inter Partes* Review (IPR) process in order to provide an efficient, cost-effective, and accurate means by which to adjudicate challenges to patent validity. Such a system, Congress recognized, would operate to the benefit of both patent owners and patent challengers—by affording the former an inexpensive and expeditious way to confirm the validity of their patents, and by affording the latter an inexpensive way of avoiding meritless infringement suits based on patents that are invalid because they are obvious in view of, or anticipated by, the prior art.

Volkswagen's experience with the IPR process is a strong indication of the success that the AIA has achieved in reaching this goal. In the short time since the statute's enactment, Volkswagen has effectively used the IPR process to bring to the PTO's attention strong prior art that anticipates or renders obvious patents that NPEs assert or threaten to assert against Volkswagen in litigation. In this way, Volkswagen has saved millions of dollars in legal fees, which has allowed the company to better focus its time and resources on delivering value to its customers.

In particular, Volkswagen has had substantial success in heading off meritless infringement suits by locating invalidating prior art and then presenting the potential plaintiff with a "pocket IPR"—that is, a draft Petition for *Inter Partes* Review challenging the asserted patent(s) based on that invalidating prior art. This strategy is successful because the patent community knows that IPRs do, in fact,

provide accused infringers—in particular, accused infringers that can identify strong prior art—a low-cost and efficient means by which to have low-quality patents invalidated.

Volkswagen's experience with IPRs belies a central theme of Petitioner's argument—namely, that *Inter Partes* Review is an unconstitutional exercise of the judicial power by the PTO because it is indistinguishable from full-blown district court litigation. If that were true—that is, if an IPR proceeding were simply a district court case by another name—the process would not operate as such a deterrent to NPEs looking to assert defective patents in order to extract quick settlements.

In short, IPRs offer a critical tool for Volkswagen and other companies to avoid expending resources on unnecessary litigation, which allows them to devote more resources to providing high-quality, low-cost innovative technology to their customers. And, for the reasons set forth in Respondent's brief, *Inter Partes* Review is entirely permissible under Article III, the Seventh Amendment, and this Court's precedents. The Court should affirm the judgment below.

ARGUMENT

I. The *Inter Partes* Review Process Was Designed To Provide A Low-Cost Alternative To District Court Litigation For Accurate Adjudication Of The Validity Of Patents.

Congress passed the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011), with the goal of "improving patent quality and providing a more efficient system for challenging patents that should not have issued," as well as "reducing unwarranted litigation costs." H.R. Rep. No. 112-98(I), at 39-40 (2011); *see also id.* at 40 (AIA was "designed to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs"). "If the United States is to maintain its competitive edge in the global economy," Congress recognized, "it needs a system that will support and reward all innovators with high quality patents." *Id.*

To this end, Congress established the *Inter Partes* Review process, which allows third parties to challenge the validity of patents under 35 U.S.C. §§ 102 and 103 "only on the basis of prior art consisting of patents or printed publications." 35 U.S.C. § 311(b). This process was intended to "make the patent system more efficient and improve the quality of patents and the patent system." H.R. Rep. No. 112-98(I), at 48. Specifically, Congress recognized that district court litigation can be a cumbersome, time-consuming, and costly means of adjudicating issues of patent validity, making it, at times, "an unbearable drag on the innovation that the patent system is

supposed to foster." S. Rep. No. 110-259, at 3 (2008); *accord* J. Matal, *Legislative History of the America Invents Act: Part II of II*, 21 FED. CIR. B.J. 539, 600-01 (2012) (noting that "the main argument for authorizing post-grant review" was "that it is often prohibitively expensive or even impossible to test the validity of a newly-issued patent that is of dubious validity, and the continued existence of such a patent can disrupt product development in a field of technology for years"). *Inter Partes* Review was thus designed to provide a "quick and cost effective alternative[] to litigation." H.R. Rep. No. 112-98(I), at 48.[3]

This outcome benefits both patent owners *and* entities accused of patent infringement—the former, because the system can effectively and efficiently "restore confidence in the presumption of validity that comes with issued patents in court," H.R. Rep. No. 112-98(I), at 48, and the latter, because accused infringers have a "more efficient system for challenging patents that should not have issued," *id.* at 39-40. *See also Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144 (2016) ("[I]nter partes review helps protect the public's 'paramount interest in seeing that patent monopolies . . . are kept within their legitimate scope.'") (alteration in original) (quoting *Precision Instrument Mfg. Co. v. Automotive Maint. Mach. Co.*, 324 U.S. 806, 816 (1945)); *Aqua Prods.*,

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[3] *See also* 77 Fed. Reg. 48612, 48636, 48637, 48642, 48660 (PTO determined not to adopt certain practices used in federal district court—such as the Federal Rules of Civil Procedure—because "Congress intended that trials under the AIA proceed more rapidly and at a lower cost than Federal District Court litigation").

Inc. v. Matal, 872 F.3d 1290, 1312 (Fed. Cir. 2017) (opinion of O'Malley, J.) ("The goal underlying the AIA is twofold: (1) eliminating patents that foster abusive litigation; and (2) affirming and strengthening viable patents."); *cf. Lear, Inc. v. Adkins*, 395 U.S. 653, 663-64 (1969) ("It is as important to the public that competition should not be repressed by worthless patents, as that the patentee of a really valuable invention should be protected in his monopoly.") (quoting *Pope Mfg. Co. v. Gormully*, 144 U.S. 224, 234 (1892)). Accordingly, IPRs serve the same goal as "[t]he Patent Clause itself": ensuring "a balance between the need to encourage innovation and the avoidance of monopolies which stifle competition without any concomitant advance in the 'Progress of Science and useful Arts.'" *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 146 (1989).

Moreover, Congress intended the *Inter Partes* Review process to be not only fast, but also accurate. By placing IPRs in the domain of the "technically sophisticated" PTO, the AIA ensures that patent validity challenges will be heard by judges with the subject-matter and legal expertise necessary to correctly adjudicate those challenges. *See Matal, supra*, at 601; *see also* Fed. Resp't's Br. 35 ("PTAB judges include patent lawyers and former patent examiners, who have far more experience assessing novelty and obviousness than generalist judges or juries.") (citations omitted). Thus, as reflected in the AIA's implementing regulations, the IPR process is directed toward the goal of ensuring "the *just*, *speedy*, and *inexpensive* resolution of every proceeding." 37 C.F.R. § 42.1(b) (emphases added); *see also*

Aqua Prods., 872 F.3d at 1312 (opinion of O'Malley, J.) (IPR process "ensure[s] quick but thorough adjudication of the merits").

II. Volkswagen's Experience With The *Inter Partes* Review Process Is Strong Evidence That The AIA Has Been Successful In Achieving Its Goals.

Volkswagen's own experience with IPRs is a prime example of the success the AIA has enjoyed in improving the efficiency and accuracy of the patent system.

A. Like many other entities, Volkswagen receives letters from patent owners alleging patent infringement by Volkswagen. Volkswagen carefully reviews such letters to determine whether the asserted claims read on Volkswagen's products, and, if so, whether the patents are valid.

Often these demand letters are from NPEs whose business model is built around purchasing patents of questionable validity—that is, patents highly susceptible to anticipation and obviousness challenges based on the prior art—and then threatening litigation in order to extract settlements from innovating companies like Volkswagen. *Cf. Commil USA, LLC v. Cisco Sys., Inc.*, 135 S. Ct. 1920, 1930 (2015) (noting that "an industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees" and that "[s]ome companies may use patents as a sword to go after defendants for money, even when their claims are frivolous"—behavior that "can impose a harmful tax on innovation") (citations

omitted). While Volkswagen is willing to—and sometimes does—pay licensing fees to inventors with valid and valuable patents that read on Volkswagen's technology, Volkswagen refuses to capitulate to the extortionist tactics used by some NPEs. The question thus becomes how best to respond to NPEs' threats of meritless infringement suits.

Prior to the enactment of the AIA, Volkswagen often responded to threats of infringement suits based on defective patents by (1) identifying strong prior art that rendered these patents anticipated or obvious and (2) sending a letter to the NPE citing this prior art. However, this did not always deter the NPEs, which knew that obtaining a judgment of patent invalidity in a district court or U.S. International Trade Commission (ITC) proceeding is a time-consuming, expensive, and generally cumbersome process. The cost involved in these litigation proceedings are well known in the industry and play into the strategy generally used by NPEs—to ask for a settlement amount constituting a fraction of what the litigation would have cost to pursue through trial. Companies in many industries would simply pay the settlement rather than face the prospect of protracted litigation. But paying such settlements is inconsistent with Volkswagen's policies concerning IP litigation. Volkswagen has proven itself willing to fight back—through protracted litigation, if necessary—against NPEs that bring lawsuits based on substantively deficient patents that do not read on Volkswagen's products.

The advent of the *Inter Partes* Review process has given Volkswagen a far more effective tool in re-

sponding to these meritless demand letters: so-called "pocket IPRs." Upon receiving a letter from a NPE asserting a patent of questionable validity, Volkswagen searches for invalidating prior art. If that search is successful—and it often is, owing to the low quality of these patents and to the level of technical and legal sophistication of Volkswagen's team—Volkswagen prepares a draft Petition for *Inter Partes* Review (the "pocket IPR") and sends the pocket IPR to the NPE, along with a statement of Volkswagen's intention to file the Petition.

This strategy has been effective in heading off meritless patent infringement suits against Volkswagen. When faced with a pocket IPR that identifies compelling prior art, a NPE will often rescind its threat of litigation, because (i) the NPE knows that the IPR process is an efficient and effective method for invalidating deficient patents, *see also* Fed. Resp't's Br. 8; and (ii) petitions for *Inter Partes* Review are public documents, and NPEs that own patents of questionable validity do not want invalidating prior art to be made publically known.[4]

In only a few years, Volkswagen has *prevented over a dozen lawsuits* with this strategy. And in this best-case scenario, Volkswagen is able to avert a meritless infringement suit without incurring trial costs at *either* the PTAB *or* the district court or ITC. Every dollar of litigation expense saved is one more dollar that Volkswagen can invest in delivering high-

[4] Indeed, the mere prospect of an IPR means that sometimes the pocket IPR is not even necessary—a letter identifying strong prior art that *could* be raised in an IPR may be enough.

quality, affordable automotive products to its customers.

These pocket IPRs can also serve as an invaluable method to obtain the dismissal of frivolous patent infringement litigation that has already commenced. In at least two instances, Volkswagen, after being sued for infringement in federal district court, has served upon the plaintiff a draft petition seeking invalidation of the asserted patents, which has quickly induced the plaintiff to agree to dismiss the district court litigation under Federal Rule of Civil Procedure 41. Again, the result is that Volkswagen may focus its resources on its business and its customers, rather than on protracted legal battles over patent infringement in federal court.

B. At times, of course, the threat posed by a pocket IPR is not sufficient to deter litigation. In these instances, Volkswagen has filed a Petition for *Inter Partes* Review in response to a demand letter or in response to the filing of a district court case or ITC proceeding. In the majority of cases, the filing of the IPR petition has led the patent owner to agree to terminate both the litigation and the *Inter Partes* Review proceeding.

For example, in December 2015, Advanced Silicon Technologies LLC filed a complaint against Volkswagen and several other automakers in both the ITC and the United States District Court for the District of Delaware. *See Certain Computing Or Graphics Systems, Components Thereof, and Vehicles Containing Same*, ITC-337-TA-984 (filed Dec. 28, 2015); *Advanced Silicon Techs. LLC v. Volkswagen AG*, No. 1:15-cv-01181-RGA (D. Del.) (filed Dec. 21,

2015). Volkswagen responded by filing several IPRs on the patents-in-suit,[5] and threatening to file additional IPRs on unasserted portfolio patents belonging to the plaintiff/complainant for which Volkswagen had identified compelling prior art. By employing this type of strategy, Volkswagen can resolve patent infringement disputes without requiring a full ITC investigation or district court proceeding, thereby saving the parties, the ITC, and the courts considerable time and resources.[6]

C. Indeed, the mere prospect of the IPR process is sufficient to deter many NPEs from threatening suit based on defective patents in the first instance. That is particularly true with respect to companies

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[5] *See Volkswagen Grp. of Am., Inc. v. Advanced Silicon Techs., LLC*, IPR2016-903; *Volkswagen Grp. of Am., Inc. v. Advanced Silicon Techs., LLC*, IPR2016-902; *Volkswagen Grp. of Am., Inc. v. Advanced Silicon Techs., LLC*, IPR2016-901; *Volkswagen Grp. of Am., Inc. v. Advanced Silicon Techs., LLC*, IPR2016-900; *Volkswagen Grp. of Am., Inc. v. Advanced Silicon Techs., LLC*, IPR2016-897; *Volkswagen Grp. of Am., Inc. v. Advanced Silicon Techs., LLC*, IPR2016-894 (all filed April 15, 2016).

[6] Volkswagen is not the only leading automaker to have success in obtaining dismissals of infringement suits filed in district court by resort to the IPR process. *See Innovative Display Techs. LLC v. Mercedes-Benz U.S. Int'l, Inc.*, No. 2:14-cv-00535-JRG (E.D. Tex.) (filed Apr. 24, 2014) (dismissed with prejudice pursuant to joint motion on June 23, 2015 after IPRs were filed against patents-in-suit); *Innovative Display Techs. LLC v. Toyota Motor Corp.*, No. 2:14-cv-00200-JRG (E.D. Tex.) (filed Mar. 10, 2014) (dismissed without prejudice pursuant to plaintiff's unopposed motion on May 20, 2015 after IPRs were filed against patents-in-suit); *Paice LLC v. Hyundai Motor Co.*, No. 1:12-cv-00499-MJG (D. Md.) (filed Feb. 16, 2012) (dismissed without prejudice pursuant to joint motion on January 13, 2016 after IPRs were filed against patents-in-suit).

like Volkswagen, which the NPEs know will aggressively and effectively use the IPR process as a means to defend themselves against meritless infringement suits.[7] This outcome of course benefits Volkswagen and its customers by lowering the company's legal costs and allowing it to focus on its primary mission of delivering innovative technologies to consumers. But it also benefits the court system as a whole by conserving judicial resources and allowing courts to focus their energies and attention on lawsuits with merit.

D. In short, IPRs are a critical tool for 21st century automakers and other companies to combat and deter frivolous and expensive infringement litigation, thus allowing them to devote more resources to providing value to their customers. At the same time, however, the process protects the rights of owners of high-quality patents that do represent a meaningful improvement over the prior art. *See Aqua Prods.*, 872 F.3d at 1312 (opinion of O'Malley, J.). If an IPR fails, the patentee is not prejudiced; to the contrary, the patentee—now armed with a favorable decision from the PTAB—may then pursue an infringement action in district court or before the ITC. What is more, the estoppel provisions of the AIA prevent any losing IPR petitioner from raising invalidity arguments in a subsequent civil action or ITC proceeding "that the petitioner raised or reason-

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[7] According to a recent study, Volkswagen is among the "Best Performing" IPR petitioners through the end of the second quarter of 2017, with a success rate of 87% (34/39). *See* P. Semani, *Patexia Chart 40: Best Performing IPR Petitioners and Patent Owners* (Sep. 27, 2017), *available at* https://www.patexia.com/feed/patexia-chart-40-best-performing-ipr-petitioners-and-patent-owners-20170926.

ably could have raised during that inter partes review." 35 U.S.C. § 315(e)(2). In this way, the IPR process fulfills its mandate to provide a method of adjudicating patent validity that is efficient, accurate, and fair to both patent owners and patent challengers.[8] The result is a stronger patent system and greater incentives for creativity and innovation—just as the Framers intended. *See* U.S. Const. art. I, § 8, cl. 8.

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[8] Importantly, Congress confirmed that the review processes established by the AIA were "not to be used as tools for harassment or a means to prevent market entry through repeated litigation and administrative attacks on the validity of a patent," as that would both "frustrate the purpose of the section as providing quick and cost effective alternatives to litigation" and "divert resources from the research and development of inventions." H.R. Rep. 112-98(I), at 48. Congress thus "intend[ed] for the USPTO to address potential abuses . . . under its expanded procedural authority." *Id.* The PTAB has taken this exhortation seriously: in a recent precedential decision, the PTAB placed significant restrictions on the extent to which it would accept follow-on petitions directed to patents that the petitioner had already challenged unsuccessfully. See Decision Denying Petitioner's Requests For Rehearing, *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, Case IPR2016-01357 (Sep. 6, 2017). The PTAB recognized that "repeated attacks on patents" presented a substantial "potential for abuse of the review process" that the AIA drafters would not have intended. *Id.* at 16-17 (quoting the legislative history of the AIA). Notably, this decision, which shows significant solicitude for the potential for prejudice to patent owners participating in the IPR process, was rendered by an expanded PTAB panel—a fact that belies Petitioner's suggestion that expanded panels serve some sort of anti-patent owner agenda, *see* Pet'r's Br. 45-47. *See also* S. Trader, *PTAB Makes Opinion Limiting Multiple Petitions 'Precedential'*, LAW360 (Oct. 18, 2017) (suggesting that the *General Plastic* opinion and the decision to designate it as precedential were responsive to concerns that patentees had expressed about "the multiple petition issue").

III. Volkswagen's Experience Belies Petitioner's Repeated Assertions That The *Inter Partes* Review Process Is Indistinguishable From Full-Blown Litigation.

Petitioner purports to distinguish the *Inter Partes* Review process established by the AIA from the earlier reexamination proceedings authorized by Congress—apparently suggesting that the former is constitutionally infirm while the latter are not—on the ground that IPR proceedings are indistinguishable from litigation in federal district court. *Compare, e.g.*, Pet'r's Br. 5-8 (discussing *ex parte* and *inter partes* reexaminations and noting that the latter were "designed to resemble traditional claim amendment-and-response patent prosecution and were not adversarial"), *with id.* 8-9, 20-21 (analogizing *Inter Partes* Review proceedings to district court litigation). Petitioner thus argues that that IPRs "bear[] every salient characteristic associated with the exercise of the judicial power" and therefore violate Article III. Pet'r's Br. 20.

But the premise of this argument—that IPRs are simply district court litigation by another name—is incorrect. To the contrary, it is precisely because IPR proceedings are *not* like litigation that they have enabled Volkswagen and other companies to efficiently challenge the validity of defective patents and thereby avoid spending large sums of money defending against meritless infringement suits in district courts or before the ITC. Indeed, this Court has recognized as much, stating that, "in . . . significant respects, inter partes review is less like a judicial proceeding and more like a specialized

agency proceeding." *Cuozzo*, 136 S. Ct. at 2143; *see also Ultratec, Inc. v. CaptionCall, LLC*, 872 F.3d 1267, 1270 n.2 (Fed. Cir. 2017) ("Very seldom do IPR proceedings have the hallmarks of what is typically thought of as a trial.").

Several specific features of *Inter Partes* Reviews make them a more efficient and streamlined way for patent challengers and owners to adjudicate patent validity:

- *Narrow scope of review.* The scope of arguments that a petitioner may raise in an IPR is narrowly circumscribed: "A petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under [35 U.S.C. §§] 102 or 103 and only on the basis of prior art consisting of patents or printed publications." *Id.* § 311(b). Questions of infringement and damages, of course, are not implicated at all. Because IPR proceedings involve only issues of anticipation and obviousness, they tend to be significantly less complex than district court patent litigation. *See also* Resp't's Br. 22 ("IPR does not decide infringement, damages, inequitable conduct, ownership, and/or a host of other patent issues.") (footnote omitted); *id.* at 26 (similar).

- *Limited discovery.* While, as Petitioner points out, *see* Pet'r's Br. 21, the parties to an IPR may engage in *some* discovery, discovery is vastly more limited in an IPR

than it would be in a district court or ITC proceeding. *See, e.g.*, *Ultratec*, 872 F.3d at 1270 n.2. A typical IPR features a handful of pieces of evidence, two or three depositions, and a record measured in the hundreds of pages (as opposed to the tens of thousands).[9] And "IPR 'trials' are short hearings, almost never involving live witnesses." Resp't's Br. 25.

- *Time limits for the Board to issue a decision.* The PTAB is statutorily required to determine whether to institute an IPR within three months of the patent owner's response to the IPR petition, *see* 35 U.S.C. § 314(b), and to issue a final written decision on the merits within 12 months of the institution of review, *see id.* § 316(a)(11).[10] District court litigation, of course, generally lasts much longer.

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[9] This is by design. The PTO expressly decided, for example, not to "adopt a specific number of automatic interrogatories, production request and depositions due to concerns over imposing costs and potential delays upon a party desiring a quicker, low cost alternative to district court litigation." 77 Fed. Reg. 48612, 48637; *see also id.* at 48660 (stating that the PTO declined to adopt discovery procedures similar to those used in federal court because "[d]iscovery of that scope has been criticized sharply, particularly when attorneys use discovery tools as tactical weapons, which hinder the 'just, speedy, and inexpensive determination of every action and proceeding[]'").

[10] The statute provides that "the Director [of the PTO] may, for good cause shown, extend the 1-year period by not more than 6 months, and may adjust the time periods . . . in the case of joinder." 35 U.S.C. § 316(a)(11).

- *Specialized tribunal.* PTAB judges generally have strong technical backgrounds and substantial familiarity with patent law, meaning they can get up to speed on the relevant technologies more quickly and issue timely (yet accurate) decisions. District court judges, in contrast, are generalists, and may have little to no familiarity with the specific technology at issue (or even patent law more generally). And juries—trained in neither the law nor the relevant technology—are especially poorly equipped to decide questions of patent validity. The use of PTAB judges benefits both patent owners *and* those accused of infringement by ensuring accurate decisions regarding the validity of patent claims.

- *Simpler, more streamlined appeals.* Because the records of IPR proceedings are generally more circumscribed, and the issues more narrowly focused, than those of district court proceedings, appeals from PTAB decisions in IPRs are streamlined and relatively inexpensive to litigate.

Thanks to these features, the IPR process ably fulfills the statutory goal of providing a "quick and cost effective alternative[] to litigation." H.R. Rep. No. 112-98(I), at 48.

IV. This Court Should Uphold The Constitutionality Of The *Inter Partes* Review Process In Order To Enable Innovating Companies Such As Volkswagen To Focus Their Resources On Providing Their Customers With New And Innovative Technologies.

In the short time since its inception, the IPR process has proven to be an invaluable tool for Volkswagen and other innovative companies to combat frivolous patent infringement litigation in an efficient way. At the same time, IPRs provide a method for patent owners to accurately and inexpensively confirm the validity of those patents that do represent a meaningful improvement over the prior art—and thus a valuable contribution to the store of human knowledge. The IPR process has achieved precisely the results that Congress envisioned when it enacted the AIA. *See supra* Section I; *see also Aqua Prods.*, 872 F.3d at 1312 (opinion of O'Malley, J.). Petitioner's arguments against the constitutionality of *Inter Partes* Review—which, as explained in Respondents' briefs, are unmoored from the constitutional text, historical practice, and this Court's precedent—provide no reason for the Court to derail that success here.

Volkswagen's mission is to identify the needs of its customers and satisfy those needs by producing innovative, sustainable, and affordable products. Every action the company takes is ultimately in service of that goal. And every dollar and man-hour that Volkswagen must dedicate to addressing the prospect (or reality) of abusive patent infringement

litigation is one less dollar or man-hour that Volkswagen can spend developing and implementing the high-quality innovative technologies that its customers value. IPRs minimize the former—and thus maximize the latter—thereby ensuring that companies like Volkswagen that depend on innovative technologies to deliver value to their customers can provide the highest quality goods and services at the lowest cost possible. The result is a stronger economy and a better patent system.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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